

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY E. CLAYBAUGH, JR.,

Plaintiff,

Case No. 10-11423
HON. BERNARD A. FRIEDMAN

vs.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

/

**ORDER ADOPTING REPORT AND RECOMMENDATION AND GRANTING
DEFENDANT'S MOTION TO DISMISS**

This matter is before the Court on Magistrate Judge Michael Hluchaniuk's Report and Recommendation ("R and R") dated October 19, 2010.

This Court had an opportunity to fully review this matter and believes that the Magistrate Judge has reached the correct conclusions for the proper reasons.

Defendant, in its motion to dismiss, asserts that Plaintiff failed to timely file his complaint for review of the Commissioner's decision to deny benefits. Defendant has submitted supporting affidavits and documentation to substantiate this assertion. Plaintiff argues that he attempted to file his appeal in the wrong court, and that by the time he realized his mistake, his sixty day appeal period had expired. However, Plaintiff has not offered any evidence of his attempt to file his appeal in the wrong court. The Magistrate Judge correctly found that there is no basis in the record for the Court to apply equitable tolling to Plaintiff's claim, and recommended that Plaintiff's claim be dismissed. The Court, having reviewed the record, has

reached the same conclusion.

Accordingly,

IT IS HEREBY ORDERED that Magistrate Judge Michael Hluchaniuk's Report and Recommendation dated October 19, 2010 is hereby accepted and adopted.

IT IS FURTHER ORDERED Defendant's Motion to Dismiss is GRANTED.

Dated: November 29, 2010
Detroit, Michigan

s/Bernard A. Friedman _____
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE